GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
ANTHONY J. KNERLY,
Respondent/Appellant,

File No. DP 172/84

Decided: September 30, 1985

Argued before the Attorney Discipline Board 17 July 1985.
Anthony J. Knerly, Respondent/Appellant, in pro per. Michael Alan Schwartz, Grievance Administrator, Eugene LaBelle, Counsel for the Attorney Grievance Commission.

BOARD OPINION

The charges were admitted by the Respondent who was attorney for an estate. The Complainant was the personal representative. Respondent, without authorization, affixed the simulated signature of Complainant on five probate documents. He filed with the probate court an accounting which incorrectly indicated that the Complainant had waived her fees as fiduciary. She had not expressly waived her fees at the time of the accounting, but did so at a later date. The hearing panel wrote an exemplary report and entered an order of suspension of ninety days. We vacate the Hearing Panel Order and reduce the discipline to a reprimand.

Respondent's misconduct was significant. Without substantial mitigation, a suspension would be sustained. However, In reviewing the discipline imposed in a given case, we are mindful of the sanctions meted out in similar cases, but recognize that analogies are not always of great value. Matter of Grimes, 414 Mich 483, 326 NW2d 380 (1982). "[R]eview of these proceedings is best handled on a case by case basis. Grievance Administrator v. Nickels, No. 73240, slip op. at 3 (Mich Aug. 20, 1985).

Despite conflicting testimony, the panel found that Respondent had not obtained the permission of Complainant to sign her name to probate documents. Unlike the Respondent in In re: Donnelly, No. 35637-A (Mich ADB 1979), a case in which the Formal Complaint was dismissed, Respondent did not have a clear power of attorney to sign another party's name to official documents. Respondent's behavior lacked "qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility" necessary in a lawyer. Schwartz v. Board of Law Examiners, 353 U.S. 232, 2 L. Ed.2d 796, 806 (1957) (Frankfurter, J., concurring).

That Respondent's actions were done with the intent to expedite handling of the estate, and to save him the time otherwise necessary to make a personal visit to Complaint and listen to what Respondent characterizes as Complaint's interminable and burdensome conversations, is not an excuse but is mitigation. Further significant mitigation consists of the shock and depression following the death of Respondent's wife who was his law office secretary during the period of

misconduct. We also note Respondent's remorse, the lack of harm to either the heirs of the estate or to the Complainant, and Respondent's thirty years of unblemished and dedicated law practice in the community. It is the peculiar constellation of these factors against the firmament of this case which accounts for Respondent's reprimand after misconduct which might otherwise call for a suspension.

The panel mentioned evidence in the record concerning Respondent's "obtuse and misleading" answers to the request for investigation. Because such misconduct was not charged in the Formal Complaint, it is not considered here in the formulation of discipline. The Board has disregarded panel findings of failure to answer a request for investigation when such was not charged in the Complaint. In re Moore, No. 35620-A (Mich ADB 1979). Where the panel's findings trespassed beyond the boundaries of the Complaint, Respondent's due process rights are endangered. In re Lewis, No. DP 11/80 (Mich ADB 1981).

The findings and conclusions of the panel, with the exception of those touching upon the request for investigation, are affirmed, and discipline is modified to a reprimand.

Board Chairman, William G. Reamon, recused himself in this matter and did not participate in the hearing or deliberations.

Martin Doctoroff, Member, dissenting:

I respectfully dissent, and would reduce discipline to a suspension of thirty days. Respondent's forgeries and misrepresentations to the probate court are not so engulfed in mitigation as to eliminate the need for a suspension. CF. Drew v Schwartz, No DP 32/80 (Mich ADB 1981) (180 day suspension for entering safety deposit box of deceased client, destroying promissory note found there, and making misrepresentations to the probate court; substantial mitigation found).

It is the unquestionable responsibility of an attorney either to receive the express permission of a personal representative to affix the representative's name to probate documents or to make all efforts to have the representative sign their name personally. A desire to expedite the probate process is insufficient reason to do otherwise. Here, even Respondent did not suggest he received Complainant's permission to sign her name, but rather:

> Q. [Respondent] Do you recall my telling you that I would sign * * * Did you have any objections when I told you that I would sign * * *?
>
> A. [Complainant] Yes * * * You said * * * you are the boss, you are going to sign * * *.

(Tr. 33-34) (emphasis added.) At best, Respondent decided that he would assume authority to sign Complainant's name, and merely informed this legally inexperienced client of his fiat. That is dangerous arrogance for a lawyer. I would suspend Respondent for thirty days.